IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11316 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAMJUBHAI RANCHHODBHAI
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 11316 of 2001
MR VIMAL M PATEL for Petitioner No. 1-8
MS. MANISHA LAVKUMAR, GOVT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 04/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. By this Special Civil Application under Article

226 of the Constitution of India the petitioners have been praying for writ of mandamus and/or any other writ order or direction, quashing and setting aside the impugned order dated 29-11-2000 passed by respondent No.2 in LAQ case No. 53 of 1990 at Annexure-A.

2. The say of the petitioners is that, notification under section 4(1) of the Land Acquisition Act came to be issued in respect of land belong to the petitioners situated at village Sakhadavadar for public purpose of Ozat-II Irrigation Scheme, and that, the award under section 11-A of the Act came to be declared on 14-2-1996. The say of the petitioners further is that the petitioners were not served with notice under section 12 (2) of he Act, that the petitioners request for making a reference under section 18 of the Act for redetermination of the market value came to be rejected.

3. We have perused affidavit-in-reply filed by respondents. It is suggested from the record and affidavit in reply that, as far as petitioner No. 1, 2 and 4 to 8 are concerned, they are in fact served with notice under section 12 (2) of the Act on 25-2-1996 and they were required to make an application requesting for reference within six weeks from the date of service of notice, i.e. from 12-2-1996. Admittedly the application requesting for making reference were filed on 17-4-1996 which is beyond the period of six weeks from the date of service of notice under section 12 (2) of the Act. Therefore, as far as the impugned order Annexure-A is concerned, the same award cannot be said to be illegal qua petitioner No. 1, 2 and 4 to 8. Petition qua petitioner Nos. 1, 2 and 4 to 8 is dismissed. Rule discharged.

4. As far as petitioner No.3 is concerned, respondent State has filed copy of the statement pertaining to the service of notice under section 12 (2) of the Act to the claimants concerned. Petitioner No.3 is the heir of deceased Gordhan Kadva at Sr. No. 14 of the said statement. Nothing is suggested from the statement against the name of the heir of deceased Gordhan Kadva so as to indicate whether notice under section 12 (2) of the Act was served or not. In affidavit-in-reply, at para-5 it has been stated that, as per the report dated 28-2-1996 submitted by Talati-Cum-Mantri copy of the said notice under section 12 (2) of the Act and also copy of the award was served upon claimants on 25-2-1996 except Gordhan Kadva, whose death or otherwise was not brought on notice by legal heirs. It is suggested from the affidavit-in-reply as

well as the statement referred to above that, deceased Gordhan Kadva died before any notice under Section 12 (2) of the Act could be served on him. It is also suggested that his legal representative was also not served with notice under section 12 (2). Thus it would be seen that as far as Gordhan Kadva is concerned, no notice under section 12 (2) was served either to him during his life time or to his legal representative after his death.

5. As far as request by petitioner No.3, who is the legal representative of deceased claimant Gordhan Kadva for making reference under section 18 of the Act is concerned, same is admittedly filed within six months from the date of passing of the award under section 11-A of the Act by respondent No.2. In absence of notice served to Gordhan Kadva or his legal representative under Section 12 (2), request for making reference within six months from the date of declaration of award under section 11-A would be well within time by petitioner No.3, and respondent No.2 cannot be said to be justified in rejecting the request of petitioner No.3 to make reference under section 18 of the Act as the same was within six months from the date of declaration of the award under section 11-A, and therefore the order Annexure-A is liable to be quashed and set aside qua petitioner No.3 and reference required to be made under section 18 of the Act by the respondent No. 2.

6. In the result the writ petition is partly granted by setting aside the impugned order Anenxure-A dated 29-11-2000 in LAQ Case No. 53 of 1990 passed by respondent No.2 qua petitioner No.3, and respondent No.2 is hereby directed to refer the application filed by petitioner No.3 Dhirajlal Gordhan under section 18 of the Act to the District Court, Junagadh, for re-determination of the market value of the acquired land, within three months from the date of receipt of this order. Rule accordingly made absolute to the aforesaid extent - qua petitioner No.3. Petition disposed of accordingly. No costs.

Dt: 4-5-2002 (N.G. Nandi, J)

(J.R. Vora, J)

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